

FEDERAL ENCROACHMENT



STATE'S RIGHTS & PRIVATE PROPERTY

Thomas Jefferson

Third President of the U.S.



“When the people fear the government, there is tyranny; When the government fears the people, there is liberty.”

ISSUES

WATER CLAUSE

GROTUS

WOTUS

ACTIVE AGENCIES



CONGRESSIONAL ACTIONS

Protecting Sovereign State Water Rights

Ditch Act of 1866 – “Recognizes priority of possession”

Desert Land Act of 1877- “Surplus water free for appropriation”

Taylor Grazing Act of 1934 – “Shall not diminish possession”

McCarran Amendment of 1952- “Waives U.S. sovereign immunity”

FLPMA of 1976 – “All actions by the Secretary are subject to valid existing rights”

Gifford Pinchot

First Chief of the US Forest Service



1907

“The creation of the National Forest has no effect whatever on the laws which govern the appropriation of water. This matter is governed entirely by State and Territorial law.”



FEDERAL BULLYING

US FOREST SERVICE
"WATER CLAUSE"

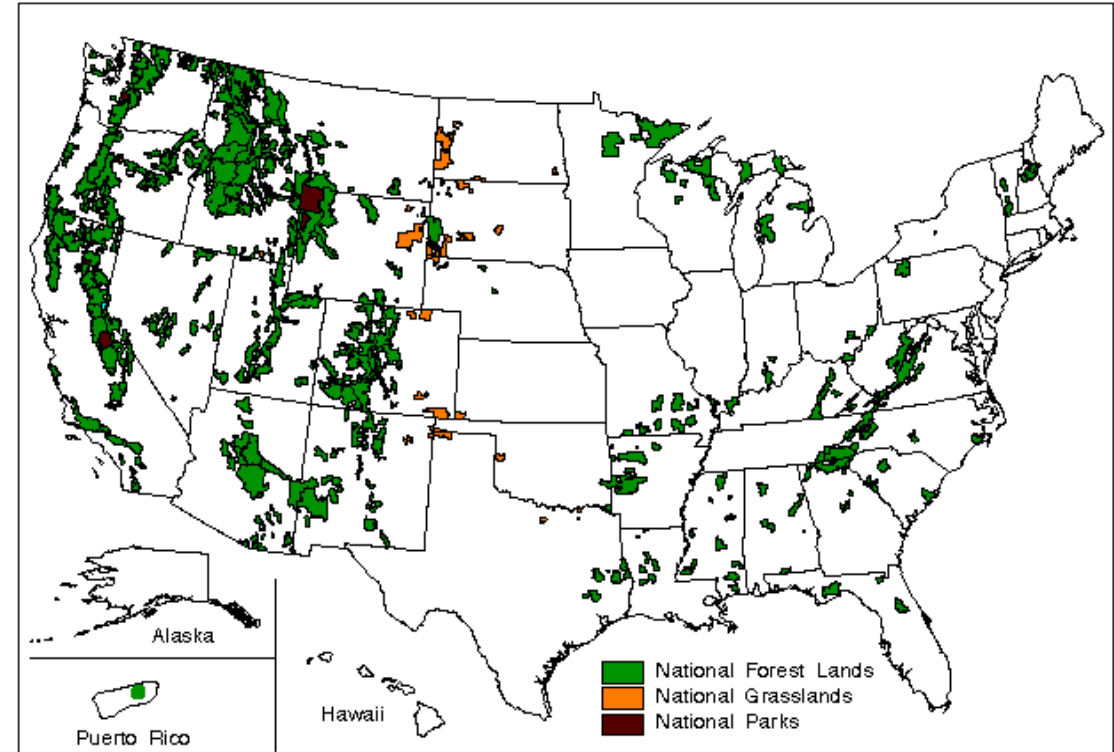
June 2004

“ any right to divert water from permitted NFS land where the use of water is on the same permitted NFS land shall be applied for and held in the name of the United States and the holder (hereinafter called “**joint water rights**”)

In the event of revocation of this permit, the United States **shall succeed to sole ownership of such joint water rights.”**



Forest System Lands

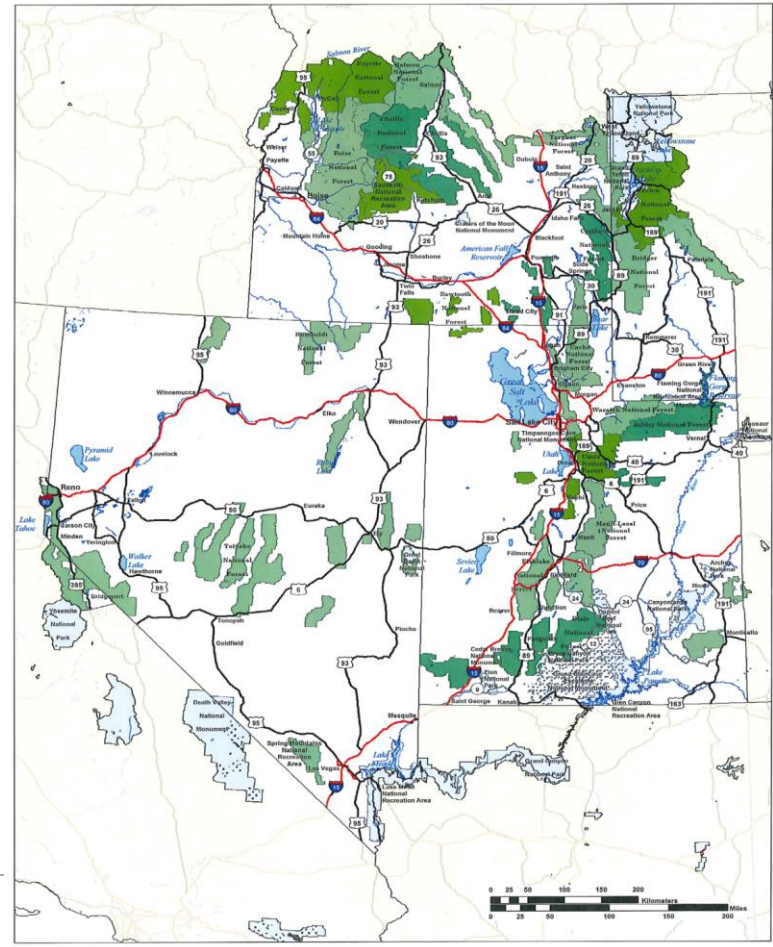


ACCORDING TO CHIEF TOM TIDWELL THE U.S. FOREST SERVICE CONTROLS:

- 14% OF UNITED STATES WATER SUPPLY
- 50% OF WESTERN UNITED STATES WATER SUPPLY



Intermountain Region



- MORE THAN 70% OF UTAH'S AVAILABLE WATER SUPPLY



GROUNDWATER RESOURCES MANAGEMENT DIRECTIVE

GROTUS

MAY 7, 2014

Harv Forsgren Intermountain Region Forester



“It is Forest Service **policy to claim water rights** for water used by permittees, contractors and other authorized users of the National Forest System...”

“The Forest Service believes water resources use to water permitted livestock are integral to the land, **therefore the United States should hold the water rights** for current and future permitted grazing.”

2012 TESTIMONY BEFORE THE HOUSE SUBCOMMITTEE ON NATIONAL PARKS, FORESTS AND PUBLIC LANDS

FARM BUREAU CONCERNS

- **FEDERALIZES STATE WATER RIGHTS**
- AGENCY DIRECTIVE IS NOT RULEMAKING – AN AGENCY DICTATE
- DIRECTIVE EXCEEDS CONGRESSIONAL AND SUPREME COURT LIMITS
- OVERLAYS FEDERAL REGULATORY STRUCTURE OVER STATE
- INVITES EPA INTO EVALUATION OF APPLICATIONS AND IMPACTS
- ---

REQUIRES FEDERAL REVIEW ON WITHDRAWALS ON ADJACENT PRIVATE LANDS
- AND MORE

114th Congress

(Tipton), “THE WATER RIGHTS PROTECTION ACT”

- Prohibits “water clause” requiring joint ownership with the United States.
- Stops the implementation of federal groundwater resources management scheme (GROTUS).

Water Rights Protection Act of 2015

114TH CONGRESS
1ST SESSION

H. R. 1830

To prohibit the conditioning of any permit, lease, or other use agreement on the transfer of any water right to the United States by the Secretaries of the Interior and Agriculture, and to require the Secretaries of the Interior and Agriculture to develop water planning instruments consistent with State law.

IN THE HOUSE OF REPRESENTATIVES

APRIL 16, 2015

Mr. TIPTON (for himself, Mr. AMODEI, Mr. BUCK, Mr. CHAFFETZ, Mr. COFFMAN, Mr. GOSAR, Mr. KELLY of Pennsylvania, Mr. LABRADOR, Mr. LAMALFA, Mrs. LOVE, Mr. LAMBORN, Mrs. LUMMIS, Mr. MCCLINTOCK, Mr. PEARCE, Mr. REED, Mr. RIBBLE, Mr. SIMPSON, Mr. SMITH of Texas, Mr. STEWART, Mr. THOMPSON of Pennsylvania, Mr. WESTERMAN, Mr. ZINKE, and Mr. FRANKS of Arizona) introduced the following bill; which was referred to the Committee on Natural Resources, and in addition to the Committee on Agriculture, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

A BILL

To prohibit the conditioning of any permit, lease, or other use agreement on the transfer of any water right to the United States by the Secretaries of the Interior and Agriculture, and to require the Secretaries of the Interior and Agriculture to develop water planning instruments consistent with State law.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the “Water Rights Protection Act”.

Western Water & American Food Security Act of 2015

Referred in Senate (07/21/2015)

114TH CONGRESS
1ST SESSION

H. R. 2898

IN THE SENATE OF THE UNITED STATES

JULY 21, 2015

Received; read twice and referred to the Committee on Energy and Natural Resources

AN ACT

To provide drought relief in the State of California, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

TION 1. SHORT TITLE; TABLE OF CONTENTS.

(a) SHORT TITLE.—This Act may be cited as the “Western Water and American Food Security Act of 2015”.

TITLE XI—WATER RIGHTS PROTECTION

. 1101. SHORT TITLE.

This title may be cited as the “Water Rights Protection Act”.

Passed the U.S. House of Representatives – July 16, 2015
Vote: 245 to 176



United States Environmental Protection Agency

WOTUS

Redefining the Clean Water Act and Waters of the United States

Navigable Waters?





EPA



Army Corps of
Engineers

Proposed Rule:

Expanding Regulatory Authority under the Clean
Water Act

March 25, 2014

OVERREACH

- Re-defines **Navigable** Water in the Clean Water Act
- Creates **Uncertainty**: State – Federal Jurisdiction
- Expands EPA regulatory reach** to basically “all wet areas: ponds, ditches, ephemerals, prairie potholes and isolated wetlands that dot America’s farms.



SCOTUS

Limitations:

Solid Waste Agency of Northern Cook County (SWANCC) vs. U.S. Army Corp of Engineers (2001)

- Congress sets the limits on the federal government
- Federal agencies cannot regulate beyond what Congress authorizes
- Federal agencies cannot encroach in traditional state power



SCOTUS

Limitations:

Rapanos vs. United States (2006)

- Clarified the Clean Water Act imposes regulatory limitations
- Defined “Navigable Waters” of the United States

EPA argument for WOTUS - Providing Clarity.

- To Justice Kennedy’s undefined “Significant Nexus” standard.

Bob Stallman, President American Farm Bureau



“this is an attempt by the Federal Government to take away the rights of property owners to determine what they will do with their land!”

AFBF “Ditch the Rule” Champaign

IMPACTS 56 AGRICULTURAL PRACTICES EXEMPTED IN THE CLEAN WATER ACT!

Such as:

- Return Flows
- Brush Removal
- Fencing

FARMERS & RANCHERS - MUST NOW MEET USDA NRCS STANDARDS



Army Corps of Engineers

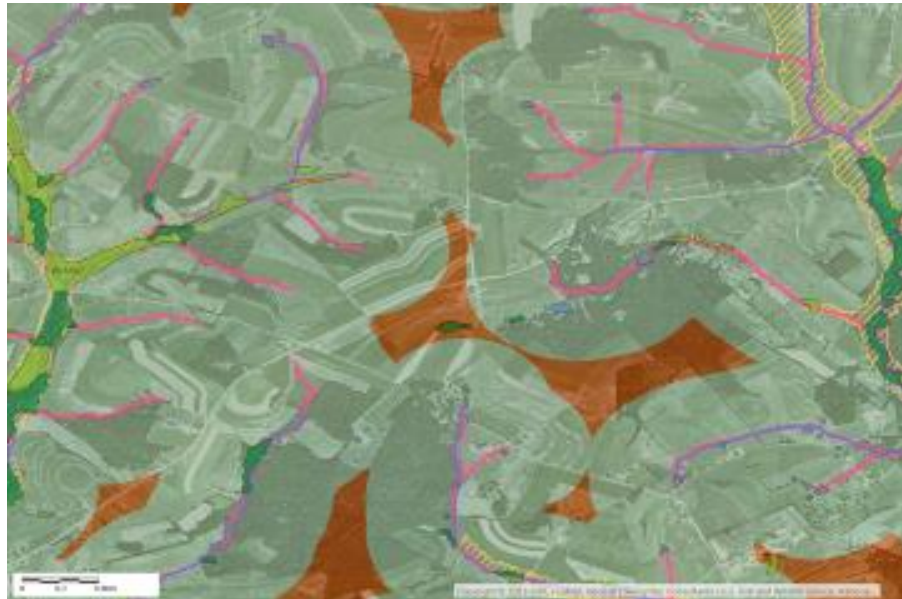
Memo to EPA - April 24, 2015

the rule is “**inconsistent with SWANC and Rapanos**. This assertion of Clean Water Act jurisdiction over millions of acres of isolated waters...undermines the legal and scientific credibility of the rule.”

EPA DEFINATION OF **TRIBUTARIES**

Ephemerals, drainages that only channel stormwater after heavy storms claimed for regulation under the rule include gullies or arroyos dry most of the time.

Not flowing rivers or streams based on a courts or common sense understanding.





Army Corps of Engineers

Memo to EPA – April 27, 2015

EPA claims “that **both agencies** have jointly made significant findings, reached important conclusions, and stand behind the rule. These statements are **not accurate.**”



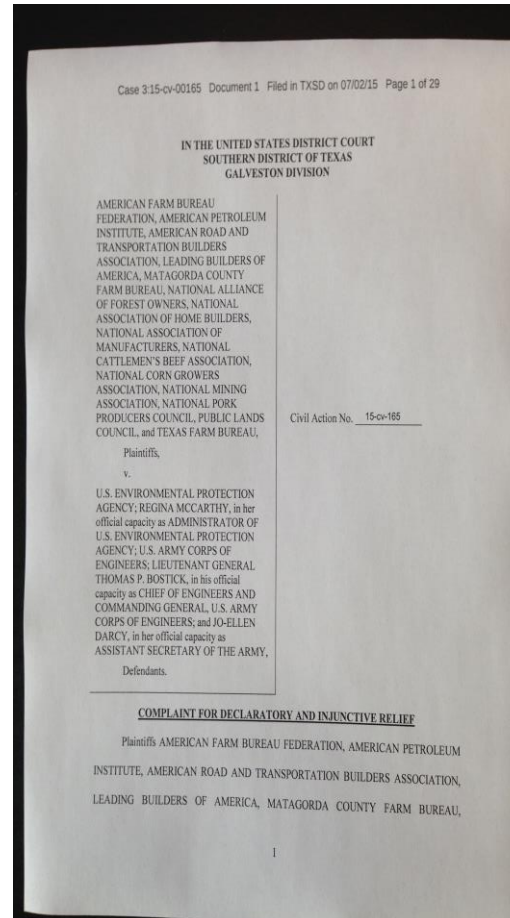
Army Corps of Engineers

Memo to EPA – May 15, 2015

“these documents contain numerous inappropriate assumptions with no connection to the data provided, misapplied data, analytical deficiencies and logical inconsistencies.”



AFBF and 13 Groups Ask Texas Court to Stay the August 28th Implementation until the Courts Rule.





Thank you